

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RYAN E. HAYS,)	
)	No. CV-11-0010-LRS
Plaintiff,)	
)	ORDER GRANTING MOTION TO
vs.)	DISMISS
)	
CITY OF SPOKANE,)	
)	
Defendant.)	
)	

BEFORE THE COURT is the Defendant's Motion to Dismiss. (ECF No. 15). This motion is heard without oral argument. (ECF No. 17). For the reasons set forth below, Defendant's Motion to Dismiss is **GRANTED**. (ECF No. 15).

I

Mr. Ryan Hays, the plaintiff, filed a pro se complaint against the City of Spokane alleging a violation of his civil rights under the "Fourth and Fourteenth Amendments to the United States Constitution" and under 42 U.S.C. § 1983. (ECF No. 10 at 2). Mr. Hays claims in April 2005, June 2007, and August 2007, "officers of the Spokane Police Department arrested [him] without

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2 probable cause or legal justification. In addition, the officers
3 used excessive force." (ECF No. 10 at 5).

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5 On April 2, 2005, Mr. Hayes alleges he was assaulted and
6 then improperly arrested for malicious mischief by an officer of
7 the Spokane Police Department. (ECF No. 10 at 2-4). Mr. Hays
8 claims "the officer did not at any time have probable cause" to
9 arrest him; yet, "the arresting officer pushed [his] head into a
10 concrete wall outside the police car," arrested Mr. Hays, and
11 booked him into jail. *Id.* at 4. After Mr. Hays spent 20 days in
12 custody, all charges related to April 5, 2005, were dismissed.
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14 *Id.* at 3.

15 In June 2007, Mr. Hays alleges he was improperly arrested
16 for criminal trespass by an officer of the Spokane Police
17 Department. (ECF No. 10 at 4). Mr. Hays asserts he was arrested
18 for being at his residence despite "no restraining order or other
19 valid court order prohibiting [him] from being at that location."
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21 *Id.* Again, Mr. Hays asserts all charges related to this incident
22 were later dismissed. *Id.*

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24 In August 2007, Mr. Hayes alleges he was "struck by a police
25 car," denied medical treatment, and then improperly arrested for
26 obstruction by an officer of the Spokane Police Department. (ECF
27 No. 10 at 4-5). "The force of the impact knocked [Mr. Hays] off
28 [his] bicycle and onto the side walk." *Id.* at 4. After he
"yelled" at the police officer, Mr. Hays states the officer

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2 reversed the "police car", approached Mr. Hays and "asked if [he]
3 had a problem." *Id.* at 4. In response, Mr. Hays states he
4 informed the police officer he was just hit with the police car,
5 and asked him to call for medical attention. *Id.* at 4. Instead
6 of calling for medical attention, Mr. Hays asserts the officer
7 put him in handcuffs, "threw [him] in the back of his patrol car"
8 and "booked [him] into jail on the charge of obstruction." *Id.*
9
10 Mr. Hays claims he did not obstruct the officer or commit any
11 other crimes. *Id.* at 5.
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13 The City of Spokane moved to dismiss Mr. Hays' complaint
14 pursuant to FRCP 12(b)(6) and (c). (ECF No. 15, 16). The City
15 of Spokane argues that each of Mr. Hays' claims is barred by the
16 statute of limitation. (ECF No. 16). In response, Mr. Hays
17 states he is filing three new charges, which are within the three
18 year statute of limitation. (ECF No. 20). Mr. Hays has yet to
19 file new charges with this Court.
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21 II

22 A. Standard for Dismissal Under FRCP 12(b)(6) and (c)

23 The City of Spokane moved to dismiss Mr. Hays' complaint
24 pursuant to FRCP 12(b)(6) and (c). (ECF No. 15, 16). Federal
25 Rule of Civil Procedure 12(b)(6) provides for dismissal of a
26 complaint for failure to state a claim upon which relief can be
27 granted. Federal Rule of Civil Procedure 12(c) allows a party to
28 move for judgment on the pleadings. The standard applied on Rule

12(c) and Rule 12(b)(6) motions is essentially the same. *Fleming v. Pickard*, 581 F3d 922, 925 (9th Cir. 2009).

Under both motions, a complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief as a matter of law. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009); *Mendocino Environmental Center v. Mendocino County*, 14 F.3d 457, 460 (9th Cir. 1994); *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). In reviewing a motion to dismiss, the court must accept as true all material allegations in the complaint, as well as reasonable inferences to be drawn from such allegations. *Mendocino Environmental Center v. Mendocino County*, 14 F.3d 457, 460 (9th Cir. 1994); *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). Further, the complaint must be construed in the light most favorable to the plaintiff. *Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

B. Failure to State a Claim Because it is Time-Barred.

If the allegations show relief is barred by the applicable statute of limitation, the complaint is subject to dismissal for failure to state a claim. *Jones v. Bock*, 549 U.S. 199, 215, 127 S. Ct. 910, 920-21, 166 L. Ed. 2d 798 (2007); *See also Fleming*, 581 F3d at 925. The statute of limitation in a § 1983 suit is that provided by the forum state for personal-injury torts.

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2 *Wallace v. Kato*, 549 U.S. 384, 384, 127 S. Ct. 1091, 1092-93, 166
3 L. Ed. 2d 973 (2007). In Washington State, the statute of
4 limitation for personal injury actions is 3 years. RCW
5 4.16.080(2). "Thus the 3-year limitation period for personal
6 injuries under Washington law applies to this section 1983
7 action." *Robinson v. City of Seattle*, 119 Wash.2d 34, 86, 830
8 P.2d 318, 347 (1992). The statute of limitation upon a § 1983
9 claim, where the arrest is followed by any criminal proceedings,
10 begins to run at the time the claimant becomes detained pursuant
11 to legal process. *Kato*, 127 S. Ct. at 1094-1100.

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14 A motion to dismiss based on the running of the statute of
15 limitation period may be granted only "if the assertions of the
16 complaint, read with the required liberality, would not permit
17 the plaintiff to prove that the statute was tolled." *Supermail*
18 *Cargo, Inc. v. U.S.*, 68 F.3d 1204, 1206 (9th Cir. 1995) citing
19 *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980).
20 In Washington State, a statute of limitation may be tolled during
21 minority, incompetency, incarceration, or military enlistment of
22 the potential plaintiff. RCW 4.16.190; RCW 38.58.090. A statute
23 of limitation may also be tolled if the defendant fraudulently
24 concealed the cause of action, or for other very narrow equitable
25 reasons. *Giraud v. Quincy Farm and Chemical*, 102 Wash. App.
26 443, 6 P.3d 104 (2000); *Trotzer v. Vig*, 149 Wash.App. 594, 606
27 n.9, 203 P.3d 1056, 1062 n.9 (2009). The plaintiff has the
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burden of establishing a factual basis for tolling the statute. *Aldrich v. McCulloch Properties, Inc.*, 627 F.2d 1036, 1041 (9th Cir. 1980).

c. Analysis

Mr. Hays alleges Officers of the Spokane Police Department violated his civil rights under the "Fourth and Fourteenth Amendments to the United States Constitution" and under 42 U.S.C. § 1983 in April 2005, in June 2007, and in August 2007. (ECF No. 10 at 2). Such § 1983 actions are subject to a three year statute of limitation. Mr. Hays has not, as is his "burden", pled any facts that would toll the statute of limitation. As Mr. Hays did not file his complaint with this Court until January 2011, which is more than three years from "the time the claimant [was] detained pursuant to legal process," his claims are barred by the statute of limitation.

d. Other Causes of Action

Claims under state law alleging false arrest or excessive force are subject to a two (2) year statute of limitations RCW 4.16.100. Therefore, to the extent such claim(s) are (or could be) asserted herein, they are barred by the passage of time.

III

Defendant's "Motion to Dismiss" (ECF No. 15) is **GRANTED**.

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2 **IT IS SO ORDERED.** The District Court Executive is directed
3 to provide copies of this Order to the parties, enter judgment,
4 and CLOSE THE FILE.
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6 **DATED** this 13th day of October, 2011.

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8 ***s/Lonny R. Suko***

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10 LONNY R. SUKO
11 United States District Judge
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